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California Stormwater Quality Association®

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October 22, 2012

Ms. Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Subject: Comment Letter – Draft Industrial Storm Water NPDES General Permit issued July 16, 2012

Dear Ms. Townsend and Members of the Board:

California Stormwater Quality Association (CASQA) appreciates this opportunity to comment on the July 16, 2012 of the draft General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water Associated with Industrial Activities (Industrial General Permit).

The CASQA Industrial Subcommittee includes a broad representation of the entities that will be affected by the Industrial General Permit, including municipalities, regulated industries, stormwater professionals, academics, and attorneys. CASQA has been involved with each issuance of California's Industrial General Permit, and has been an advocate for industrial stormwater permits that protect water quality and are practical for industrial operations, providing both technical resources to the State Water Board and a voice for stakeholders affected by the permits.

CASQA appreciates the efforts the State Water Board has undertaken since April 2011 to complete the draft and seek stakeholder input on various elements of the draft Industrial General Permit. Although we have significant comments on the language, the July 16 draft is a much improved document.

CASQA's significant concerns, noted here are summarized in Attachment 1 of this letter. Specific language suggestions and requested clarifications are provided in Attachment 2. While we have attempted to be comprehensive, we have not necessarily cross-referenced our suggestions to every place in the permit and its attachments that may address the issues in question.

CASQA also requests that our comments submitted on April 28, 2011 on the Draft Industrial Storm Water NPDES General Permit issued January 28, 2011 Draft Industrial on April 29, 2011, be incorporated by reference.

Thank you for the opportunity to provide comments. Please contact Geoff Brosseau, our Executive Director, at (650) 365-8620 if you have any questions or need additional information,

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or me at (714) 955-0670. We are also available to meet at your convenience to review the issues described in these comments.

Very truly yours,

A handwritten signature in black ink that reads "Richard Boon". The signature is written in a cursive, flowing style.

Richard Boon, Chair
California Stormwater Quality Association

Attachments

1. Significant Comments
2. Detailed Comment Table

cc: Greg Gearheart, State Water Board
Bruce Fujimoto, State Water Board
CASQA Industrial Subcommittee, Executive Program Committee, Board of Directors

October 22, 2012

ISSUE 1. NUMERIC ACTION LEVELS

Summary Comment

1 CASQA supports the development of properly derived and statistically valid Numeric Action Levels (NALs), particularly on an industry sector-specific basis. If the State Water Board wishes to use the EPA benchmarks, CASQA would support the approach if NALs are used in the same way as the U.S. Environmental Protection Agency (EPA) uses them, as one tool for assessing a facility's performance.

2 We also support using properly derived action levels as recommended by the Blue Ribbon Panel report (as upset values) as one of many mechanisms to assess program effectiveness.

Because the use of "action levels" is not expressly addressed in EPA regulations, use of numeric values as "benchmarks" or "action levels" must be very carefully defined in an NPDES permit. The State Water Board must make sure that such numeric values are not converted into Numeric Effluent Limits (NELs) or be the focus for asserting non-compliance. NELs should only be established and implemented through the legally required procedures for developing NELs and including NELs in NPDES permits as set forth in the CWA. Neither EPA nor the State Water Board has developed legally defensible NELs on a broad general permitting basis, but EPA has promulgated a few limited stormwater-related effluent limitations guidelines (ELGs) for very specific industrial stormwater discharges, as recognized in the proposed permit. Otherwise, the use of benchmarks or other NALs is a reflection of the need to identify various tools for assessing BMPs in the absence of properly promulgated effluent guidelines, even if those tools are imprecise and subject to debate.

Comment Discussion

The draft Industrial General Permit includes a list of numeric values ("benchmarks") from the EPA Multi-Sector General Permit for Stormwater Discharges Associated With Industrial Activity (MSGP) reissued in 2008 (except for Oil and Grease, which was included in the 2000 MSGP), and declares them to be Annual NALs. In a number of respects, particularly in the Exceedance Response Actions (ERAs) for Level 2, the draft Industrial General Permit uses the Annual NALs differently than EPA uses benchmarks in the MSGP.

EPA's benchmarks are listed in the monitoring section of the MSGP, Section 6.2. The MSGP contains a Corrective Action section that defines responses to various conditions. It requires, among other things, that if an average of four quarterly samples exceeds one of the benchmarks specifically identified as relevant to each industry sector, facilities review the selection, design, installation, and implementation of control measures to determine if corrective actions are appropriate. (MSGP §3.2.) Facilities must document any benchmark exceedances and their response, including either (1) the corrective action(s) taken, (2) a finding that the exceedance was due to natural background pollutant levels, or (3) a finding that no further pollutant reductions were technologically possible, or economically practicable and achievable in light of best industry practice consistent with Part 6.2.1.2 of the MSGP. (MSGP §5.4.) (Not all sectors perform benchmark monitoring; each remaining sector only compares results to specific benchmarks identified by EPA as required for that industrial sector.)

The MSGP specifically allows contributions from natural background sources to be considered. As a result, if repeated efforts to attain benchmark values through corrective actions prove unsuccessful, water quality concerns remain, and natural background or other unregulated sources of the pollutants are not contributing factors (as examples), EPA reserves the authority to mandate additional site-specific requirements or an individual permit (see Parts 2.2.1 and 1.6, respectively).

We appreciate the draft Industrial General Permit's recognition that exceedance of an NAL (whether an NAL in Table 5 or an alternate NAL, see discussion below) will not violate the permit. CASQA cautions that the use of values as "benchmarks" or "action levels" cannot serve as or be converted into future NELs. In the MSGP, EPA expressly provides that their benchmarks are not NELs, and serve as just one of multiple mechanisms for quantifying best management practice (BMP) and stormwater program effectiveness. While the draft Industrial General Permit contains more details in its ERA requirements, we understand that its intent is the same – to provide a tool for evaluating BMP effectiveness, and not to set compliance levels which may not be exceeded, even after ERAs are taken at a site.

Instantaneous NALs

2 CASQA commends the Board for using established statistical procedures for identifying outliers for the purposes of determining the proposed instantaneous NALs. Such an approach is consistent with the Blue Ribbon Panel recommendation that "upset values" could be set at a high enough level such that it was clear that further site-specific investigation is justifiable. This will help keep on-site personnel focused on implementing their Stormwater Pollution Prevention Plan (SWPPP) instead spending precious resources tracking down potentially insignificant problems. CASQA also commends the Board for focusing on constituents that more commonly occur as potential pollutants across most types of industrial facilities. Though CASQA appreciates the flexibility in setting site-specific NALs, it would also be cost-effective to allow alternative NALs to be proposed for entire industry types, as noted below.

Sector-Specific NALs Development

Using outlier values for NALs is appropriately analogous to the 'upset' values described in the Blue Ribbon Panel report. This method is also consistent with the Panel's recommendation to use California data to the extent possible. However, if it were possible to use a more refined evaluation of the data set to exclude extreme events (high rainfall amounts and high rainfall intensity) and loading from natural erosive processes, a different NAL could result.

Hopefully, the new Industrial General Permit will result in additional data, including not only discharge data, but also storm size and storm intensity data, as well as improved data quality. Further, we would hope that the data set could be coupled with site-specific data such as BMP information (treatment and source controls, pervious and impervious land use, etc.) that would allow the data set to be assessed after additional data collection in the new Permit term, to re-evaluate any industry-wide NALs.

CASQA believes that any NAL should be technology-based and rely on sector- or group-specific data that would be augmented during the coming permit cycle. The baseline technology will differ among sectors. For example, the varying drainage patterns in some industrial sectors would not allow permanent placement of treatment BMPs that less dynamic operations allow.

Also, existing facilities may have a limited right-of-way that precludes the use of some treatment technologies. Allowing for different NALs for existing and new facilities is consistent with the recommended approach of the Blue Ribbon Panel report.

- 3 Language should be added to the Industrial General Permit to allow for industry-specific NALs to be updated when the additional data provides such indication, using the same statistical approach to identify outlier NAL values. The procedure for revision would require proposal and adoption as a permit amendment, after public notice and comment. Please see details of such a process in Section II, p. 5-6 of Attachment 2 to CASQA's April 29, 2011 Comments on the 2011 draft Industrial General Permit.

Calculation of NAL Exceedance, Geometric Means and Exclusion of Data from Events that Exceed the Design Storm

- 4 CASQA recommends the use of geometric means for determination of annual average. Due to the variability in stormwater runoff quality from highly variable qualified storm events, an arithmetic mean of analytical results for any single parameter can be unduly distorted by a single result from an atypical storm event or by atypical site conditions. Consequently, the arithmetic mean may not be representative of the average or typical effluent quality. A geometric mean for all constituents except pH would be a more appropriate method to characterize storm water quality during a reporting period. This method was recently adopted by the Santa Ana Regional Water Quality Control Board in the Scrap Metal Sector Industrial Permit (Order R8-2012-0012).

- 5 CASQA further recommends that data collected from storm events which exceed the design storm event be excluded from NAL assessments, both instantaneous and annual averages.

We have included suggested language changes to address these recommendations and clarify the calculation of annual NAL exceedances and determination of instantaneous NAL exceedances in Attachment 2.

ISSUE 2. INCORPORATION OF TOTAL MAXIMUM DAILY LOADS (TMDLS)

Summary Comment

- 6 CASQA agrees with Findings 36-41 and TMDL Requirements Section VII.A., in that many existing TMDLs do not provide sufficient clarity as to requirements applicable to industrial stormwater dischargers. Once those TMDLs are further clarified and refined by the Regional Water Boards in accordance with the process outlined in Finding 38, CASQA also agrees that industrial stormwater-related TMDL-specific requirements must first be incorporated into the permit before those requirements are enforceable against permittees, as prescribed by Section VII.A. However, CASQA believes that Effluent Limitation V.C is in direct conflict with Findings 38-40 and TMDL Requirements Section VII.A by requiring blanket incorporation by reference and immediate compliance with existing and/or future approved TMDLs in violation of Water Code sections 13000 and 13263.

Comment Discussion

More importantly, the language included in Section V.C exposes permittees to premature and inappropriate administrative or third party actions to enforce TMDL requirements before the TMDLs are clarified for application to specific industrial stormwater dischargers, and before

those refined requirements are incorporated into the permit. Further Section V.C is not supported by the express findings of the permit, or the evidence in the administrative record.¹

Finally, Section V.C would result in the Regional Water Boards and State Water Board abdicating their responsibility under 40 C.F.R. §122.44(k), to determine whether a BMP approach, rather than numeric effluent limitations, is appropriate given the site-specific TMDL and the scope and impact of industrial stormwater discharges.

Specific language changes to Section V.C are included in Attachment 2.

Waste Load Allocations Should be Implemented through BMPs

8 As with municipal stormwater discharges, CASQA believes that all TMDL WLAs incorporated into stormwater permits should be implemented as BMPs. CASQA recommends that the State Water Board recognize BMP based compliance in the Industrial General Permit findings and recommends the addition of the following language into or following Finding 39.

“Compliance may include, but is not limited to, implementation of BMPs and control measures contained in TMDL implementation plans sufficient to achieve the WLA, or a demonstration that the numeric WLA has been achieved.”

ISSUE 3. NAL OFF-RAMPS AND TRIGGERS

Summary Comment

CASQA appreciates the State Water Board’s interest in guiding dischargers through a more detailed BMP selection process. In Issue 1 above, we discuss the choice of the EPA benchmarks as action levels and the new instantaneous action levels. This comment, in contrast, focuses on the steps to be followed where monitoring results trigger follow up reports and actions.

The ERA process is quite complex, and administering it, especially with the many required submissions into SMARTS, and tracking responses under the various circumstances, will be a challenge for smaller dischargers, dischargers with multiple facilities, and the Water Boards. Simplifying the ERA process to more closely match the MSGP would not sacrifice the goals of the Industrial General Permit yet it will eliminate a significant administrative process and expense. The Industrial General Permit has many important, detailed requirements, noncompliance with which will be permit violations, and compliance with which will assure a significant level of pollution control. In adopting the MSGP approach, EPA achieved nearly all of the results sought in this Industrial General Permit revision, but in a simpler way that will save administrative costs and avoid confusion. Better guidance will allow the dischargers to focus on improving their understanding of appropriate BMPs and stormwater control measures, instead of focusing on the more confusing details of the ERA structure.

¹ Orders adopted by the State Water Board not supported by the findings, or findings not supported by the evidence, constitute an abuse of discretion. See 40 C.F.R. § 124.8(b)(4); *Topanga Ass’n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974); *California Edison v. SWRCB*, 116 Cal. App. 3d 751, 761 (1981); see also *In re Petition of the City and County of San Francisco*, State Board Order No. WQ-95-4 at 10 (Sept. 21, 1995).

Simplifying the ERA Process Structure

9

CASQA requests that instead of requiring a phased BMP evaluation, the Industrial General Permit employ a more general requirement to evaluate BMPs and file a report on the evaluation and corresponding changes to a facility's SWPPP. This process would continue to recognize that the selection of BMPs should and can consider whether exceedances are caused by natural background or non-industrial sources. The State would retain the authority to require additional site-specific controls for water quality issues or require an individual permit.

Revisions to the ERA Process as Currently Structured

If the basic ERA structure is not simplified, CASQA proposes the following alternative revisions:

Level 1 Status XII.C

10

We note that the facility evaluation in Level 1 must consider all industrial pollutant sources and related SWPPP implementation measures, not just those whose NAL exceedance triggered Level 1 Status. CASQA does not object to this approach in Level 1, but recommends it be highlighted in the Fact Sheet.

11

CASQA strongly recommends allowing a discharger to file a Demonstration Technical Report (DTR) while at Level 1. CASQA requests that the permit allow dischargers to file a DTR that would satisfy the Background or Non-industrial Sources off-ramps at Level 1, if they choose to do so. This would not relieve them of the obligation to perform a Level 1 evaluation and to adopt additional operational source control BMPs, if necessary. There are circumstances where this will be more efficient for the discharger; for example, facilities that begin operations later in the permit cycle or which are in the same watershed or company group with those in Level 2. The analysis may resolve questions raised by the Level 1 review, or raised by other interested parties.

Extending Level 1 Implementation (XII.D.1)

There are circumstances where BMPs selected in the evaluation described for Level 1 reasonably must occur for an additional permit year before their effectiveness can be evaluated.

12

CASQA requests that a process similar to the BMP Implementation Extension Request (BIER) be allowed to justify delay of triggering Level 2 for up to one additional year, where the discharger demonstrates that implementation of the BMPs selected in Level 1 over such period reasonably must occur for an additional permit year before their effectiveness can be evaluated. If a discharger files a BIER demonstrating that implementation requires more than one year, then the trigger events would not require Level 2 evaluation the following year, but the year after.

Level 2 Status XII.D – Scope of Evaluation

Section XII.D.2.a describes the scope of evaluation that must be performed within 120 days of an NAL exceedance that elevates a site to Level 2 status, including determining “whether additional structural and/or treatment control BMPs are necessary to prevent or reduce the industrial pollutants that exceeded the NALs in industrial storm water discharges in compliance with BAT/BCT.”

CASQA understands that this section of the draft Industrial General Permit would not limit the discharger to implementing only structural and/or treatment controls when additional BMPs are necessary for dischargers that have reached Level 2 Status. Rather, it requires that the appropriateness of structural and/or treatment controls be evaluated. In some cases, implementing additional non-structural and non-treatment BMPs may be an appropriate response for a Level 2 Status discharger.

13 CASQA recommends using “Additional BMPs (Including Consideration of Structural/Treatment Control)” instead of only “Structural/Treatment Control.” In this manner, the discharger will be required to consider structural and/or treatment controls, but can elect to implement additional non-structural (i.e., source control) measures to address NAL exceedances.

CASQA’s recommended revisions to the draft Industrial General Permit Language are included in Attachment 2.

Level 2 Evaluation and Demonstration Technical Reports; “BAT/BCT” Determinations

The phrase “in compliance with BAT/BCT” is not only problematic as a matter of misapplying this permit-writing standard to the discharger itself, but also because it appears to presume that if additional measures are undertaken, the facility previously has not been in compliance with BAT/BCT, which appears to be required elsewhere in the permit. To avoid this implication, dischargers may be driven toward making every attempt to prove no new measures are needed (e.g., performing the costly, detailed BAT/BCT Compliance Demonstration Report including proposing a new NAL, or another “off ramp” report), rather than installing new measures. In addition, other sections of the Industrial General Permit describe the approach to BMP selection, and, in particular, Section XII.D.3 defines the alternative, which is to show one has achieved the performance standard to “reduce pollutant discharges to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” This phrasing is used in the MSGP (see MSGP Section 2, introduction, and Section 6), and is reflected in our other comments on Section XII below.

14 CASQA requests deletion of the phrase “in compliance with BAT/BCT” In Section XII.D.2, as shown in the suggested language for XII.D.2 in Attachment 2.

Level 2 Demonstration Reports Consideration of Low Impact Development Measures

15 CASQA requests consideration of low impact development (LID) approaches in the “BAT/BCT Compliance Demonstration Report” where BMPs are implemented to reduce the volume and intensity of runoff from industrial sites. Because these LID measures also reduce pollutant loads, they should be considered in assessing a discharger’s corrective action approach. In addition, the possible reduction in loading should be included in the evaluation provided for in Section XII.E.3.

CASQA’s proposed language to address these comments is included in Attachment 2.

ISSUE 4. WATER BOARD RESPONSE TO DEMONSTRATION TECHNICAL REPORTS (DTR)

CASQA members have raised significant questions concerning the possibility of a Regional Water Board rejecting a discharger's DTR after significant investments in structural/treatment controls have already been made.

In CASQA's view, either the Industrial General Permit should use the process defined in the MSGP, which is less prescriptive and detailed, or the Permit should include an option for dischargers to request Regional Water Board concurrence and approval prior to implementation of structural and/or treatment controls. Delayed Regional Water Board response to the report could conceivably negate the benefit of some planning steps already performed, or more importantly, require improvements to be removed or changed after already installed and monies expended.

16

One possible approach for providing for Regional Water Board approval prior to implementation of potentially costly control measures is to allow concurrent submission of the Level 2 ERA Technical Report and the BAT/BCT Compliance DTR. Regional Water Board concurrence with these two reports will provide dischargers greater certainty that implementation of Regional Water Board approved structural/treatment controls will be sufficient to return to baseline status.

Even where a discharger does not affirmatively seek Regional Water Board concurrence, delayed Regional Water Board response to the report could conceivably negate the benefit of some planning steps already performed, or more importantly, require costly improvements to be removed or changed after already installed.

CASQA's recommended text revisions to address these concerns are provided in Attachment 2.

ISSUE 5. PERMIT ESTABLISHMENT OF TECHNOLOGY BASED LIMITS, PER BAT/BCT/BPT STANDARDS

Summary Comment

The Industrial General Permit recognizes that BAT/BCT is satisfied by establishment of the multiple, integrated sections describing a process for how BMPs are to be designed and adopted, and that BAT/BCT is not a standard as to specific individual BMPs. Similarly, in the MSGP EPA has used its own Best Professional Judgment (BPJ) to conclude that for purposes of the MSGP, the non-numeric effluent limits set forth in the collective whole of the MSGP (BMPs provided for, under the authority of 40 CFR § 122.44(k)) constitute BAT/BCT for that permit. EPA regulations do not require that particular BMPs be adopted at all similar sites to "comply with BAT/BCT;" rather the State Water Board is using its BPJ in describing a process of BMP implementation, in order for the Industrial General Permit to satisfy the BAT/BCT/BPT technology-based standards.

Comment Discussion

In fact, as stated above, actual industry-specific BAT/BCT/BPT standards can only be established on a specific process through the Clean Water Act Effluent Limitations Guidelines process (CWA § 304(b)), and EPA has promulgated such ELGs for only a limited number of specific stormwater discharges. Those have been included in the proposed permit and CASQA

17 does not object to that mandate. EPA’s MSGP asserts compliance with BAT/BCT/BPT standards, more-or-less as a collective analysis of all of the MSGP mandates. EPA explains its ability to satisfy BAT/BCT/BPT through the permit requirements as a whole, through a combination of the Agency’s BPJ and discretion afforded it under the CWA. The bottom line is that the requirements of California’s Industrial General Permit, as a whole – not a discharger’s choice of specific BMPs – satisfies BAT/BCT/BPT, so sites cannot be expected to make “BAT/BCT/BPT determinations” for individual sites, and even the State Water Board cannot make BAT/BCT/BPT determinations for individual sites in a general permit. Facilities should be able to propose an alternative NAL approach based on the “availability and feasibility” standard set forth above (“reduce pollutant discharges to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice”). This may be more effectively done on an industry-wide basis through compliance groups, as appropriate (please also see CASQA’s comments on Compliance Groups).

18 CASQA requests that permit findings explain in more detail that the permit satisfies the Clean Water Act requirement to achieve BAT/BCT through its description of the process for development of an appropriate SWPPP and monitoring and inspection protocols, as well as the SWPPP re-evaluation process in Section XII (NAL Exceedance Response Actions). CASQA requests revisions to clarify that provisions in Sections V, X and XII refer to the *permit’s* satisfaction of BAT/BCT rather than providing the impression that individual actions of the *permittee must establish BAT/BCT* in this permit cycle.

CASQA’s proposed language to address the above comments is included in Attachment 2.

ISSUE 6. DESIGN STORMS

Summary Comment

19 CASQA supports the use of the 85th percentile, 24-hour storm as the design storm and we have confirmed that the volume- and flow-based methodology described in the draft Permit is consistent with CASQA published guidance. (Please note that the reference in footnote 8 to the CASQA handbook should be January 2003, not June 2012.) In addition to the inclusion of a design storm for treatment control BMPs, CASQA recommends specifying the same storm event in the ERA section of the draft Industrial General Permit.

5 The Industrial General Permit should explicitly limit data used in assessing NAL exceedances to data collected from storm events that do not exceed the Design Storm event specified in the permit (i.e., the 85th percentile storm, or the initial portion (up to and equal to the volume of the 85th percentile storm) of larger storms. Without this clarifying language, there could be a mismatch between the event magnitude required for treatment controls, and that required to assess the need for additional controls in the ERA process.

We have included suggested language changes and references to clarify the Design Storm calculations and NAL assessments in Attachment 2.

ISSUE 7. ADDITIONAL WORDING TO ELIMINATE LRP AND CLARIFY SIGNATORIES

Summary Comment

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The Draft Industrial General Permit's approach to defining a "Legally Responsible Person" as an entity separate from the "Discharger" causes multiple problems, in that it confuses the obligations of the permittee with that of particular individual people who may represent the Discharger. The language also is inconsistent regarding who can certify and file an NOI, which legally cannot be delegated. This can be solved by centralizing the certification and signatory requirements in one place (XXI.K is currently the best place), and abandoning use of the concept and term, "Legally Responsible Person" ("LRP"). The term "Discharger" can be substituted in nearly all cases. The permit can defer to the SMARTS system guidance for logistics. If the draft Industrial General Permit intends to require each Discharger to have only one primary signatory at a time, this can be explained more clearly.

Comment Discussion

Revisions to the Glossary Definitions of Discharger and LRP

The Glossary contains a definition of "Legally Responsible Person", which is not actually a person but can be a corporate entity and appears to be the actual permittee. The Glossary contains a definition of "Discharger" that simply cross refers to the definition of Legally Responsible Person, showing that two terms are not needed. (The phrase "or other entity" adds nothing because entities are mentioned in the LRP definition.)

CASQA requests that the more detailed definition now assigned to LRP be used as the definition of "Discharger," and the separate definition of LRP be deleted.

"Discharger: A person, company, agency or other entity that is the operator² of the industrial facility covered by ~~The Legally Responsible Permit (see definition) or entity subject to this General Permit.~~"

"Legally Responsible Person: ~~A person, company, agency or other entity that is the operator of the industrial facility covered by this General Permit.~~"

Revision of Glossary Definition of Duly Authorized Representative

This definition says it means the individual "who may sign, certify and submit Permit Registration Documents, Notices of Termination, and any other documents, reports, or information required by the General Permit, the State or Regional Water Board, or US EPA."³

² This matches the federal requirement as to who must apply for a permit. 40 CFR 122.21(b) specifies that when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

³ The person authorized to sign and certify reports is intended to satisfy the federal regulation, and carries the familiar specifications:

"a duly Authorized Representative has responsibility for the overall operation of the regulated facility or activity, such as a person that is a manager, operator, superintendent or another position of equivalent responsibility, or is an individual who has overall responsibility for environmental matters for the company..."

The definition attempts to address the actual signatory requirements, which must be consistent with similar language in 40 CFR 122.22(b).⁴ However, it is not consistent with the regulation or the permit's other more explicit instructions, in Section XXI.K, which are not easily restated as a definition. Among other things, the definition appears to allow a Duly Authorized Representative to file the permit application, i.e., the NOI, which may not satisfy 40 CFR 122.22(a), which requires a high level representative of the Discharger to certify the initial application, and to designate the Duly Authorized Representative.⁵

CASQA's recommendation for simplifying this language is provided in Attachment 2.

21

Attachment C also discusses certification requirements for the Permit Registration Documents. The application, helpfully, does not refer to a Legally Responsible Person or a Duly Authorized Representative at all. The relevant sections seem to be F.5 and 6 (repeated in H.1 (d) and (e) for No Exposure Certification), which require:

"5. A [sic] NOI Certification by the Discharger that all PRDs submitted are correct and true."

"6. SMARTS Electronic Authorization Form Signed by any user authorized to certify and submit data electronically."

Section F.6 (identical to H(1)(e)) appears to be a somewhat confusing administrative reference to who may sign and submit documents. CASQA recommends it refer to Order Section XXI.K also.

CASQA's recommendations regarding specific language changes are provided in Attachment 2.

ISSUE 8. RECEIVING WATER LIMITATIONS

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The draft Industrial General Permit (Section VI [p. 22] of the Draft Permit, together with Section XX.B [p 65]), substantially change the receiving water limitations, eliminating the existing permit's description of a process which maintains a Discharger's compliance with the permit. In addition, the language in Section VI.A should not include the phrase "or contribute," because, as recognized by EPA when it eliminated those words in the MSGP in 2008, that phrase is not required by regulations in effluent limits but comes from the threshold that simply shows "reasonable potential" triggering the need to simply have a limit. The phrase "or contribute" is not found in the Clean Water Act or clarified by precedent when used in an effluent limitation.

CASQA requests revisions to Section VI and Section XX.B.1 to correct this issue. Specific language changes are provided in Attachment 2.

⁴ The definition and other Draft Permit language also leaves ambiguous whether the authorization may be made by authorizing anyone holding a corporate *position* rather than a named person occupying the position (40 CFR 122.22(b) expressly allows designation by position).

⁵ Please also see Order Section XXI.K (see also Form 200 on the SWRCB's website, which is the general WDR application form), for the lists of persons qualified to sign permit applications, which matches 40 CFR 122.2(a).

ISSUE 9. PRE-STORM INSPECTIONS

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CASQA appreciates the incorporation of the NOAA forecast as a trackable and consistent indicator of rain event predictions. Nonetheless, CASQA remains concerned about the concept of predicted rain event inspections because of the effort involved in tracking and documenting the weather to demonstrate compliance. CASQA recommends the deletion of predicted rain event inspections in lieu of regular inspection of facilities. We believe that a regular monthly inspection is preferable to the constant tracking of predicted rain events. These monthly inspections could encompass both the quarterly non-stormwater inspections and the predicted storm event inspections.

Suggested language for a revised approach for Dry Weather Visual Observations is provided in Attachment 2.

ISSUE 10. CONFIDENTIAL AND PROPRIETARY INFORMATION

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CASQA members have expressed concern that information required in the SWPPP, which will be submitted electronically, may result in the release of confidential information or information that must be protected to prevent bioterrorism, protect homeland security, and as may be the case with operations such as food processors, protect food safety. The main concern arises from the electronic filing of the SWPPP. In contrast, the MSGP requires only that the Discharger have the SWPPP available at its facility. If a member of the public requests the SWPPP, then the Discharger and the government can agree on those provisions to be released. Electronic filing of maps and itemization of specific chemicals in the SWPPP is not desirable; if a special procedure is established, the administrative burden will be substantial on the State as well as dischargers. Thus, CASQA recommends that the Permit not require the very detailed SWPPP required under the Permit to be filed electronically.

The August 2012 State Water Board's Response to Comments on the 2011 draft cites a 2011 CASQA comment on this subject information. The State Water Board response does not appropriately cover the question of the filing of SWPPPs, in that it cites a legal case on the subject of permit application filings, *In Environmental Defense Center v. US EPA* (9th Cir. 2003) 344 F.3d 832.⁶ The holding in that case, which pertained to municipal stormwater plans that were, themselves, considered part of the actual permit, would not apply to the filing of SWPPPs, which in the case of the industrial general permit are not permit application documents. The Fact Sheet recognizes that minimum federal standards are met by including more specific minimum BMPs in the permit, along with specific requirements in the Exceedance Response Actions.

24

Alternatively, if filing the SWPPP is required, dischargers must be given the opportunity to file SWPPPs in hard copy in lieu of electronic filing, identifying the information that is not subject to public disclosure, together with the related justification. The State would be responsible to ensure that inappropriate disclosures are not made to the public. However, this is a substantial burden, which could be greatly reduced if no filings are required, with the relevant processing of

⁶ *In Environmental Defense Center v. US EPA* 344 F.3d 832 (9th Cir. 2003).

trade secret or security or safety-based redactions, when disclosure is requested. The protection of confidential business information should be consistent with the Water Code 13267(b)(2) as well as the Public Records Act and Freedom Information Act, though the concerns are larger in scope than trade secret issues, due to additional safety and security considerations.

ISSUE 11. COST OF NEC FILING

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CASQA is concerned with the significant potential cost impacts to California businesses and the effort required of previously unregulated facilities applying for No Exposure Certification (NEC) coverage. While we understand the need to incorporate federal NEC provisions, the draft Industrial General Permit goes well beyond what is required under EPA's MSGP and several other West Coast states with NPDES permitting authority (i.e., Washington and Oregon). Because the costs to prepare and submit the NEC were not included in the State Water Board's cost analysis report, the following is an estimate of potential costs. These costs are based on the current draft Industrial General Permit language that appears to require a licensed professional to prepare the NEC once the permit is adopted (and before the QISP training program is in place) and the development of a site map that is equivalent to that required to be included with the SWPPP.

- Preparation of SWPPP compliant site map (5-10 hours at \$150/hr) - \$750-\$1,500
- Site Visit and Preparation of NEC Checklist (5-10 hours at \$150/hr) - \$750-\$1,500
- Upload of materials to SMARTS (4-12 hours at \$75/hr) - \$300-\$900
- NEC Filing Fee - \$242

Estimate of Initial NEC Filing Costs - \$2,042 – \$4,142

EPA and West Coast states with NPDES permitting authority (i.e., Washington and Oregon) only require submittal of the NEC checklist once every 5 years and do not require a filing fee or development/submittal of a site map.

Based on the State Water Board's estimate that approximately 30,000 businesses will be required to file an NEC, this onerous process could cost California businesses between \$61,000,000 and \$133,000,000. Based on Dunn and Bradstreet data obtained for San Diego County (~14,000 potentially applicable businesses based on SIC code), we believe 30,000 businesses may be a significant underestimate and there could be as many as 100,000 businesses that could be required to file an NEC statewide. This could drive the economic impact for California businesses as high as \$200,000,000 – \$400,000,000.

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CASQA recommend the State Water Board be consistent with federal and other surrounding states NEC filing requirements, and not subject small, low threat to water quality, businesses to excessive costs.

ISSUE 12. IMPLEMENTATION OF THE QISP REQUIREMENTS

CASQA is concerned that the July 1, 2014, timeframe for Qualified Industrial Stormwater Practitioner (QISP) implementation will not provide sufficient time for the State Water Board to develop and allow industry to receive QISP training sufficient to meet the permit requirements. The permit requires a QISP certify the facility SWPPP and provide employee training by July 1, 2014. As written, if QISP training is not available by July 1, 2014, then the only qualified people

that can revise a SWPPP will be licensed individuals as defined in the draft Industrial General Permit, as they are not required to complete the QISP training course and can function as a QISP upon Permit adoption. The use of a Professional Engineer or similar licensee to certify a SWPPP and to provide basic employee stormwater training would represent a substantial financial burden for facilities who would otherwise utilize their own knowledgeable stormwater staff members. In addition, a Professional Engineer or similar licensee would be expected to take on the liability of implementing the IGP before the State has provided guidance on how to implement this new, complex permit.

Based on CASQA's experience in preparing and implementing a similar training program with the Construction General Permit (CGP), it is highly unlikely that the QISP training will be developed and implemented in the allocated timeframe. For example, the CGP Training Team (CGPTT) convened by the State Water Board held their first meeting in January 2008 (a year and a half before permit adoption), and it took more than two years before the pilot training was developed and offered in March 2010. The CGP provided the construction industry two years to obtain the State sponsored Qualified SWPPP Practitioner/Developer (QSP/D) training.

The IGP Steering Committee has yet to be selected or hold their first meeting, and the IGP permit adoption is anticipated to occur in less than a year. Although there should be some time savings gained from lessons learned in developing the Construction General Permit Training Program, the IGP training requirements present new challenges not previously addressed. The IGP Steering Committee will require more time to develop the comprehensive training needed to cover significant new and technically complex permit components. Given the importance of the training and the significant impact to industry, the training development should not be rushed to meet an arbitrary deadline. CASQA requests the QISP implementation date be extended to July 1, 2015 (or two years after permit adoption) to allow the IGP Steering Committee sufficient time to fully develop the material, and industry enough time to complete the training program requirements.

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ISSUE 13. PERMIT EFFECTIVE DATE AND QISP AVAILABILITY

CASQA members are very concerned about the potential gap between the permit effective date and the availability of trained QISP's. In general CASQA supports the State Water Board's efforts to establish a consistent bar for training requirements for professionals writing and implementing SWPPPs. Given the critical importance of the SWPPP, CASQA believes that the next generation of facility SWPPPs that will be required by the new Industrial General Permit should be developed by professionals meeting the QISP training standards. CASQA recommends the State Water Board delay the effective date of the permit until the QISP training program is functioning and there is a sufficient number of QISPs trained to serve the industrial community.

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ISSUE 14. EXPAND QISP TRAINING EXEMPTIONS

CASQA recommends the State Water Board include a QISP training exemption for Certified Professionals in Storm Water Quality (CPSWQ). Unlike training and testing associated with licensed professionals (PE, PG, CEG) currently exempted from the QISP training requirements in section IX.A.1, the CPSWQ program includes many components with direct bearing on the Industrial General Permit and the core concepts needed to develop and implement a stormwater

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CASQA Comments
Attachment 1. Significant Comments

program (e.g., CWA and the NPDES regulations, industrial permitting requirements and applicability, SWPPP preparation and implementation at industrial sites, monitoring and reporting requirements, water quality sampling methods, analytical methods, pollutant source identification, spatial and temporal characteristics of urban runoff, pollutant loading, BMP applicability for various industrial activities, hydrologic calculations, and treatment control technologies). CASQA believes that the experience and knowledge based testing, and requirements for ongoing professional education CPSWQ Inc., requires of their registrants qualify these individuals for QISP training exemption.

Additional information on the CPSWQ program and testing requirements can be found at:

<http://www.cpswq.org/cq-products/wkbk-toc.asp>

<http://www.cpswq.org/cq-products/cpswq-review-outline.asp>

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CASQA further recommends that individuals qualified as Certified Professionals in Erosion and Sediment Control (CPESC) who have successfully obtained Qualified SWPPP Developer (QSD) credentials under the Construction General Permit be automatically qualified as QISPs for industrial activities whose primary pollutant of concern is sediment, specifically landfill operations and mining.

In addition to eliminating unnecessary training and redundancies, these additional exemptions will expand the pool of QISP qualified individuals immediately available to industrial facilities.

CASQA Comments
Attachment 2. Detailed Comment Table

Item No.	Permit Element/Issue/Concern (Issue # if discussed in Attachment 1)	Location in Draft Industrial General Permit	Comment
Corrective Actions/NALs			
4 1.	NAL Exceedance Calculation (Issue 1 and 6)		Clarify language regarding how to determine an annual NAL exceedance and use geometric means rather than arithmetic averages for all parameters except pH, and limit assessment to qualifying results.
4 a.		Fact Sheet I.D.5.a and b (pp10)	<p>“a. Annual NAL exceedance: the Discharger shall determine the average <u>(geometric mean for all parameters except pH; arithmetic mean for pH)</u> concentration for each parameter using the <u>qualifying</u> results of all the sampling...”</p> <p>“b. Instantaneous maximum NAL exceedance: the Discharger shall compare all <u>qualifying</u> sampling and analytical results from each distinct sample (individual or combined) ...”</p>
4 b.		Section I, Finding 65 (pp 10-11)	<p>“...An NAL exceedance is determined as follows: (1) for the annual NAL, an exceedance occurs when the average <u>(geometric mean for all parameters except pH; arithmetic mean for pH)</u> of all <u>qualifying</u> analytical results <u>for a parameter listed in Table 5 from all samples taken at a facility during a reporting year and calculated in accordance with the US EPA-</u> ⁺ <u>guidance</u> exceeds an annual NAL <u>value for any parameter</u> listed in Table 5 <u>of this General Permit</u> (or is outside the NAL pH range), or ; (2) for the instantaneous maximum NAL, an exceedance occurs when the second <u>qualifying</u> analytical result from any sample taken at a facility for the same parameter in Table 5 of this General Permit (TSS, O&G, or pH) exceeds the instantaneous maximum NAL value (or is outside the NAL pH range) in a single reporting year. <u>Qualifying analytical results are those from storm events that do not exceed the Design Storm identified in X.H.7 ...</u>”</p>
4 c.		Section XII.A.1.b (pp 45-46)	<p>“a. Annual NAL exceedance: the Discharger shall determine the average <u>(geometric mean for all parameters except pH; arithmetic meant for pH)</u> concentration for each parameter using the <u>qualifying</u> results of all the sampling and analytical results for the entire facility for the reporting year (i.e., all "effluent" data) and compare this to the corresponding annual NAL values in Table 5.</p> <p>“Instantaneous maximum NAL exceedance: the Discharger shall compare all the</p>

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4			<p><u>qualifying</u> sampling and analytical results from each distinct sample (individual or combined) to the corresponding instantaneous maximum NAL values in Table 5. An instantaneous maximum NAL exceedance occurs when two or more analytical results for <u>the same parameter</u> (TSS, O&G, or pH) <u>from the same outfall</u> from samples taken within a reporting year exceeds the instantaneous NAL value (or is outside the NAL pH range).</p>
11	<p>2. NAL Off-Ramps and Triggers (Issue 3)</p>	<p>Section XII.c (pp 46)</p>	<p>Add new items.</p> <p><u>4. At any time in Level 1 status the Discharger’s QISP III may evaluate industrial pollutant sources, the SWPPP, non-industrial pollutant sources, natural background sources, and the impact of industrial storm water discharges to receiving waters, and prepare a Level 1 ERA Demonstration Technical Report (Demonstration Technical Report) as applicable. A Demonstration may address one or more pollutants and/or drainage areas.</u></p> <p><u>5. Once a Demonstration Technical Report is submitted, the Discharger automatically returns to Baseline Status for that pollutant for NAL/ERA water limitations for the discharge identified in the Demonstration. If a Non-Industrial Source Pollutant Demonstration Technical Report is submitted, the Discharger remains responsible for compliance with BAT/BCT and receiving water limitations for the discharge identified in the Demonstration. If a Natural Background Demonstration Technical Report is submitted, the Discharger is not responsible for the identified parameter(s) in the drainage area(s) in the Demonstration Technical Report.</u></p> <p><u>6. (Insert required content for Non-Industrial and Natural Sources Demonstration Reports or refer to Items E.4 and E.5)</u></p>
12	<p>3. NAL Off-Ramps and Triggers (Issue 3)</p>	<p>Section XII.D (pp 47)</p>	<p>“A. Level 2 Status — Additional BMPs (Including Structural / Treatment Control)</p> <p>1. A Discharger’s Level 1 status for any parameter(s) immediately and automatically changes to Level 2 status for the same parameter(s) if sampling results indicate an NAL exceedance in any subsequent reporting year for the same parameter(s).</p> <p><u>a. Dischargers may document the need for a delay in triggering Level 1 for up to one</u></p>

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Item No.	Permit Element/Issue/Concern (Issue # if discussed in Attachment 1)	Location in Draft Industrial General Permit	Comment
12			<p><u>year if additional time is needed to evaluate the effectiveness of implemented BMPs required under by certifying and submitting a Level 1 BMP Effectiveness Assessment Extension request through SMARTS. The extension request shall be prepared by a QISP I and include the following items, as applicable:</u></p> <ul style="list-style-type: none"> <u>i. Reasons for the time extension; and</u> <u>ii. A description of the new BMPs and schedule for completing the effectiveness assessment.</u>
13			<p>2. Within 120 days of obtaining Level 2 status, the Discharger shall:</p> <ul style="list-style-type: none"> a. Complete an evaluation of the facility’s SWPPP and all the pollutant sources that may have contributed to the NAL exceedance(s) and identify whether additional <u>BMPs, including</u> structural and/or treatment control BMPs are necessary to prevent or reduce the industrial pollutants that exceeded the NALs in industrial storm water discharges in compliance with BAT/BCT. The Discharger may limit this evaluation to the parameter(s) exceeding the NAL(s); and, b. Certify and submit via SMARTS a Level 2 ERA Demonstration Technical Report prepared by a QISP II⁷ that includes the following: <ul style="list-style-type: none"> Results of the Level 2 ERA evaluation; i. A detailed description of any additional <u>BMPs, including</u> structural and/or treatment control BMPs and SWPPP revisions for each parameter that exceeded an NAL; ii. The implementation schedule for <u>the additional BMPs and where necessary</u>, the design and construction of the identified treatment and/or structural source control BMPs; and,

⁷ The vast majority of the work required of a QISP III will likely include hydrologic and hydraulic calculations. Per the CA Business and Professions Code, this implies that the person doing or supervising engineering work would have to be a California licensed professional engineer.

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Item No.	Permit Element/Issue/Concern (Issue # if discussed in Attachment 1)	Location in Draft Industrial General Permit	Comment
13			<p>iii. If the Discharger intends to certify and submit a Demonstration Technical Report in lieu of additional structural and/or treatment control BMPs and SWPPP revisions for each parameter that exceeded an NAL, the Discharger shall certify and submit a schedule and a detailed description of the tasks required to complete the Demonstration Technical Report.</p> <p>2. Based upon the above evaluation and Level 2 ERA Technical Report, the Discharger shall, as soon as practicable, but no later than one year from obtaining Level 2 status:</p> <ul style="list-style-type: none"> a. Implement any additional structural and/or treatment control BMPs, <u>and other BMPs</u>, and SWPPP implementation measures; b. Revise the SWPPP <u>if necessary</u>; and, c. Complete the Demonstration Technical Report, if applicable.
16	4. Water Board Response to Demonstration Technical Reports (DTR) (Issue 4)	Section XII.D.2.b (pp 47)	<p>Add a new subsection:</p> <p><u>“v. The discharger may elect to obtain Regional Water Board concurrence for significant structural/treatment control improvements prior to implementing those improvements. In those cases, the discharger may elect to submit the Level 2 ERA Technical Report and BAT/BCT Compliance Demonstration Report concurrently, including a request for Regional Board concurrence and any appropriate provision for the approval process in the project schedule. Upon concurrence by the Regional Water Board and implementation by the discharger, the discharger will automatically return to baseline status.”</u></p>
16	5. Water Board Response to Demonstration Technical Reports (DTR) (Issue 4)	Section XII.D.3 (pp 48)	<p>Add to the end of section XII.D.3:</p> <p><u>“The one year maximum period allowed to complete installation of BMPs (otherwise measured from the date of the NAL exceedance) will be automatically extended such that the maximum period will be no less than 180 days after the date of the Regional Water Board’s request to revise BMPs. The BEIR process would also remain available, if satisfying the BEIR standards.”</u></p>

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Item No.	Permit Element/Issue/Concern (Issue # if discussed in Attachment 1)	Location in Draft Industrial General Permit	Comment
16	Water Board Response to Demonstration Technical Reports (DTR) (Issue 4)	Section XII.D.7 (pp 51)	Insert the following underlined language: “... The State Water Board Executive Director or the Regional Water Board may reject the ERA Level 2 Demonstration Technical Report direct the Discharger to take further action(s) to comply with this General Permit <u>within 45 days after the date a report is filed.</u> ”
BAT/BCT			
18	Effluent Limitations (Issue 5)	Section V.A (pp 21)	Dischargers shall implement BMPs that constitute compliance with BAT/BCT to prevent and reduce pollutant discharges <u>to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice, in accordance with Sections IX (Training Qualifications) and X (SWPPP Requirements) of this General Permit.</u>
18	SWPPP Performance Standards (Issue 5)	Section X.C.1.b (pp 25)	“Identify and describe the minimum BMPs (Section X.H.2), and additional facility-specific BMPs Section X.H.4) to reduce or prevent pollutants in industrial storm water discharges and authorized NSWDS, <u>to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.</u> BMPs shall be selected to achieve BAT/BCT and compliance with WQS; and,... ”
18	ERA Level 2 Demonstrations (Issue 5)	Section XII.E.2 (pp 48)	“... If a Non-Industrial Source Pollutant Demonstration Technical Report is submitted, the Discharger remains responsible for compliance with BAT/BCT and receiving water limitations <u>all requirements under this General Permit for the industrial component</u> for the discharge identified in the Demonstration (<u>storm water associated with the Discharger’s industrial activity</u>).” (Note: The above change also clarifies the language to emphasize controls for the industrial component of the discharge.)

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18	10. BAT/BCT Compliance Demonstration Technical Report (Issue 5)	XII.E.3.a (pp 48-49)	Add a new sub item under XII.E.3.a as follows: <u>“vii. The mass loading reductions achieved through reductions in discharge volume and intensity.”</u>
18	11. BAT/BCT Compliance Demonstration Technical Report (Issue 5)	Section XII.E.3.c (pp 49)	“A statement that the Discharger has already designed, installed, and implemented operational source control, treatment, and/or structural source control BMPs that are required to reduce or prevent pollutants in industrial storm water <u>discharges to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.</u> ”
18	12. BAT/BCT Compliance Demonstration Technical Report (Issue 5)	Section XII.E.3.f (pp 49)	“A description of all implemented BMPs that constitute BAT/BCT for <u>that already address</u> the specific identified parameter(s) in the drainage area(s);” Note: The statement required under XII.E.3.c sets the threshold, no need to repeat each time, which is also confusing.
18	13. BAT/BCT Compliance Demonstration Technical Report (Issue 5)	XII.E.3.g (pp 49)	“Alternate NALs, if applicable, that correspond to the identified treatment/structural BMPs <u>described in paragraph XII.E.3.f and reflect BAT/BCT level of control. Alternate NALs may be expressed in terms of either concentration, mass, or reductions in mass loading. Alternate NALs shall substitute for the corresponding NALs for the relevant constituent on Table 5, for purposes of subsequent ERAs and other provisions of this General Permit.</u>
Monitoring and Inspections			
23	14. Anticipated rain event inspections (Issue 9)	XI. A 1 and 2 (pp 36-38)	1. Dry Weather Non-Storm Water Discharge (NSWD) Visual Observations a. Dischargers shall visually observe each <u>industrial operation area and</u> drainage area for <u>as follows:</u> i. <u>Industrial Operation Areas: storm water drainage and containment areas to identify any spills, leaks, or improperly controlled pollutant sources, and appropriate BMPs</u>

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Item No.	Permit Element/Issue/Concern (Issue # if discussed in Attachment 1)	Location in Draft Industrial General Permit	Comment
			<p>ii. <u>Drainage Areas</u>: the presence or indications of prior, current, or potential unauthorized <u>Non-Storm Water Discharges (NSWDs)</u> and their sources; and,</p> <p>iii. Authorized NSWDs and their sources.</p> <p>b. Except as provided for storage and containment (Section XI.A.2.b), Dischargers shall conduct NSWD dry weather visual observations <u>monthly</u> quarterly. Quarters are defined as follows:-</p> <p style="padding-left: 40px;">1st Quarter = January, February, March</p> <p style="padding-left: 40px;">2d Quarter = April, May, June</p> <p style="padding-left: 40px;">3d Quarter = July, August, September</p> <p style="padding-left: 40px;">4th Quarter = October, November, December</p> <p>c. Dischargers shall select appropriate intervals when scheduling <u>quarterly dry weather NSWD</u> visual observations. <u>Inspections shall be scheduled at least 10 working days apart</u>. For observation intervals that are greater <u>less</u> than <u>10</u> 16 <u>working</u> days apart, a justification shall be included in the Annual Monitoring Report. <u>Dry weather NSWD</u> visual observations shall be conducted during daylight hours within scheduled facility operating hours on days without precipitation <u>and runoff</u>.</p> <p>e. Dischargers shall ensure documentation of <u>BMPs in need to repair or maintenance, identification of BMPs needed prior to the next rain event</u>, the presence, indication, or source of any authorized and/or unauthorized NSWD, the presence or absence of floating and suspended materials, oil and grease, discolorations, turbidity, odors, trash/debris, and source(s) of any observed pollutants (if different from the source of the NSWD).</p> <p>2. Storm Water Discharge Visual Observations</p> <p>d. Prior to an anticipated precipitation event, visual observations of all storm water drainage and containment areas shall be conducted to identify any spills, leaks, or improperly controlled pollutant sources, and appropriate BMPs must be implemented</p>

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23			<p>prior to rainfall. The visual observations are required during scheduled facility-operating hours and are not required more than once within in any 14 day period. An anticipated precipitation event is any weather pattern that is forecasted by the National Weather Service Forecast Office to have a 50% or greater probability of producing precipitation in the facility's weather zone. Dischargers shall ensure that a QISP reviews precipitation forecast information from the National Weather Service Forecast Office (e.g., by entering the zip code of the project's location at http://www.srh.noaa.gov/forecast).</p> <p><u>d e.</u> In the event that the first QSE in a month does not produce a discharge that can be visually observed at one or more discharge locations, dischargers shall record which discharge locations were observed that did not discharge, and visually observe discharges from those locations from the next QSE(s) that produces a discharge in that month. Dischargers shall provide an explanation in the Annual Report for uncompleted monthly visual observations only for those months that at least one QSE occurs. Dischargers are not required to perform additional visual observations in subsequent months for any uncompleted monthly visual observations.</p> <p><u>3 f.</u> Dischargers shall maintain records of all visual <u>observations described in Section XI.A.</u> Records shall include the date, approximate time, locations observed, name of person(s) that conducted the observations, and any response actions and/or additional SWPPP revisions necessary in response to the visual observations.</p>
23	15. Anticipated rain event inspections	XI.A.2.d (pp 37)	<p>Should CASQAs' recommended approach for the dry weather inspections not be accepted this change is needed to facilitate the understanding of these requirements and consistent implementation.</p> <p>Section XI.A.2.d does not specify how frequently a discharger needs to check the weather forecasts. NOAA will typically update a forecast several times a day. It is unreasonable to expect a discharger to track weather to this extent. CASQA recommends including a time parameter in this condition.</p>

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Item No.	Permit Element/Issue/Concern (Issue # if discussed in Attachment 1)	Location in Draft Industrial General Permit	Comment
23			<p>“An anticipated precipitation event is any weather pattern that is forecasted by the National Weather Service Forecast Office to have a 50% or greater probability of producing precipitation in the facility’s weather zone <u>within a 72 hour period. Dischargers are only required to check the weather every three days.</u>”</p>
23	16. Limit scope of record keeping	XI.A.2.d (pp 38)	<p>Should CASQAs’ recommended approach for the dry weather inspections not be accepted this change is needed to facilitate the understanding of these requirements and consistent implementation.</p> <p>The scope of Section XI.A.2.f, is not clear. CASQA recommends the following language be added to clarify that the documentation requirements discussed are limited to this section of the permit.</p> <p>“Dischargers shall maintain records of all visual observations <u>described in Section XI.A.</u> Records shall include the date, approximate time, locations observed, name of person(s) that conducted the observations, and any response actions and/or additional SWPPP revisions necessary in response to the visual observations.”</p>
29	17. Sample Analysis Reporting	Section XI.B.9.a (pp 40)	<p>The Industrial General Permit requires dischargers to use value equal to ½ of MDL for any calculations required by the General Permit. CASQA recognizes that using ½ of the laboratories’ MDL is a practical approach for calculation purposes in SMARTS. However, there are two different categories of non-detected results: (1) results less than the MDL and (2) results equal or greater than the MDL but fall below the Minimum Level or the Reporting Limit (ML/RL). Consequently, CASQA recommends that the reporting protocols address each category of non-detected results appropriately.</p> <p>When results fall under the MDL, reporting the non-detected values as ½ of the MDL is appropriate. However, when results fall below the ML/RL, the same reporting protocol as currently proposed will generate a reservoir of data that are lower than those estimated in the laboratory (e.g., if the MDL =1 mg/L, ML/RL=5 mg/L, and the sample result is estimated at 3 mg/L; the reported value should not be ½ of the MDL or 0.5 mg/L).</p> <p>In order to accurately report results that fall between the MDL and the ML/RL, CASQA</p>

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29			<p>recommends using the estimated chemical concentration (e.g., if the MDL =1, ML/RL=5, and the sample result is estimated at 3 mg/L; then a numerical estimate “E” value or E3 mg/L shall be reported) in the average calculation.</p> <p>CASQA also strongly objects to the requirement that dischargers ‘report’ non detect data as anything other than as reported by the laboratory – the need to use ‘real numbers’ in a calculation should not affect how data is reported. Reporting data and calculating averages should be separate steps to assure data validity into the future.</p>
18.	Sample Location Reductions	Section XI.C.3 & 4 (pp 43)	<p>The Industrial General Permit allows Sample Location Reductions (SLR) for multiple discharge locations within <u>each</u> drainage area and Section XI.C.4 provides dischargers the option to reduce analytical cost by combining samples collected from four drainage areas in the laboratory.</p> <p>In the draft Industrial General Permit, eligibility for SLR as described in Section XI.B.3 is not clear for substantially similar drainage areas that are not sub-drainage areas to one another. If the SLR is only applicable for multiple drainage locations within one drainage area, dischargers who currently qualified for SLR for different drainage areas with substantially similar industrial activities will need to bear significant cost increase to start collecting at least one sample from each drainage area. This change will be especially significant for large facilities with many individual drainage areas, some of which pose safety and access concerns.</p> <p>CASQA agrees that the eligibility for SLR should be dictated by industrial activities and physical characteristics of the drainage areas as proposed in the draft Industrial General Permit and recommends clarification that substantially similar drainage areas that are <u>not</u> sub-drainage areas of one another also qualify for SLR.</p>
19.	Method Detection Limits	Section XI.B. Table 5 (pp 42)	<p>As discussed in the comments CASQA previously submitted for the January 28, 2011 draft Industrial General Permit, a majority of the parameters listed in Table 5 identifies only one approved test method with a corresponding MDL, rather than both the EPA and the equivalent Standard Methods to provide laboratories the flexibility to use either method with</p>

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31			<p>the respective MDLs. Because many laboratories are certified only to one method for a given parameter. This restriction will reduce the number of laboratory options available to dischargers, particularly in remote areas where options are severely limited.</p> <p>Furthermore, the MDLs for several parameters are inconsistent with the methods identified and are below levels achievable by several state certified laboratories (e.g., TSS, COD, etc.) While the use of more stringent test methods with lower detection limits may be useful for priority pollutants, specifying unachievable MDLs for conventional parameters (TSS, TOG, COD, Nitrate+Nitrite Nitrogen, Total Phosphorus, Ammonia, and BOD) that are routinely detected will not provide a greater level of confidence (e.g., requiring a 1.0 mg/L MDL for TSS is not necessary when TSS is always detected at much higher concentrations).</p> <p>As a result, CASQA recommends the specification of EPA or the equivalent Standard Methods be used to analyze parameters listed in Table 5 without specifying MDLs that may be unachievable or the MDL requirement for all the conventional pollutants listed in Table 5.</p>
20.	Sample Reduction Frequency	Section XI.C.6 (pp44)	<p>CASQA recommends that discharges who can demonstrate they meet the criteria for sample reduction frequency with existing/historical data under the current permit term (e.g., 8 consecutive sampling events) be allowed to reduce their sampling frequency. Dischargers who have demonstrated past consistent compliance with the proposed NALs should not have that data discounted.</p> <p><u>“d. Existing Dischargers that can demonstrate full compliance with the NALs under the term of 97-03-DWQ are eligible for sample frequency reduction in accordance with the following requirements”</u></p> <p><u>i. The Discharger demonstrates that the data from 8 consecutive storm events meet all the applicable NALs. Samples must be from the most recently sampled storm events.</u></p> <p><u>ii. The Discharger was able to certify full compliance with all the requirements of 97-03-DWQ, as demonstrated in the submitted Annual Reports for the years associated with the sampling.</u></p> <p><u>iii. Dischargers subject to enforcement action by the Regional Water Boards may be</u></p>

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32			<u>excluded from eligibility.</u> <u>iv. Eligible Dischargers wishing to qualify for SFR shall certify and submit via SMARTS an SFR report with their NOI.”</u>
SWPPP/BMPs			
49	21. Material Handling and Waste Management	Section X.H.2.d.i (pp 31)	<i>Edit section as follows:</i> <u>Adopt procedures to control</u> Prevent or minimize handling of industrial materials or wastes that can be readily mobilized by contact with storm water during a storm event;
49	22. Material Handling	Section X.H.2.d.ii (pp 31)	<i>Edit section as follows:</i> Contain <u>Adopt practices to control</u> non-solid industrial materials or wastes that can be dispersed via wind erosion or contact with storm water during handling;
19	23. Sediment Basin Design	Section X.H.2.g.iv (pp 33)	<i>Edit section as follows:</i> Design sediment basins to ensure compliance with the design storm standards in Section X.H.7. <u>Existing basins that have previously been designed for a different design storm standard do not need to redesign the basin, unless being reconstructed. Maintenance and repair of the sediment basin to maintain original line, grade and hydraulic capacity of the facility is not considered reconstruction.</u>
Design Storm			
19	24. Design Storm Changes (Issue 6)	Section I Finding 81 (pp 14)	CASQA recommends the State Water Board deletion of Finding 81. We have concerns that this finding will be counterproductive to the goal of developing a comprehensive statewide design storm. 81. Regional Water Boards may revise the treatment design storm standard provided in this General Permit for a Discharger based upon (1) sampling data demonstrating that a higher or lower standard would be protective of water quality, and (2) the treatment technology associated with the revised design storm meets BAT/BCT.

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19 25.	Design Storm Standards (Issue 6)	Section X.H.7.a. (pp 34)	CASQA recommends the addition of a new subsection for the volume-based calculation which would allow the option of using local historical rainfall records, similar to options provided for design of flow-based BMPs (H.7.b.ii and H.7.b.iii). <u>iv. “The volume of runoff produced by the 85th percentile storm event, as determined from local historical rainfall records.”</u>
19 26.	Design Storm Standards (Issue 6)	Section X.H.7.a.ii (pp 34)	The WEF document contains a series of equations that are related and provide a few methods of getting at the solution – depending on the assumptions and various site factors that are applicable (drawdown time, etc.). Additionally WEF Manual has a newer version. Therefore we suggest revision to footnote 7 to reference the various equations and the previous and current versions of the WEF Manual. Edit citation as follows: ⁷ Water Environment Federation (WEF). Manual of Practice No. 23/ ASCE Manual of Practice No. 87, <u>Cited in Chapter 5, pg. 175 Equation 5-2 (1998 Edition) and Cited in Chapter 3 (2012 Edition).</u>
19 27.	Design Storm Standards (Issue 6)	Section X.H.7.a.iii (pp 34)	Revise footnote 8 on Page 35 to reference the current and potential future location of the CASQA BMP handbooks. Edit citation as follows: ⁸ California Stormwater Quality Association. Stormwater Best Management Practice New Development and Redevelopment Handbook. Web. June 2003 <u><http://www.cabmphandbooks.com/Development.asp> <http://www.casqa.org> .</u>
19 28.	Design Storm Standards (Issue 6)	Section H.7.b (pp 35)	The introductory language says that dischargers must treat two times the maximum flow rate, while one of the subsections that follow provides an option of designing for a maximum flow intensity of 0.2 inch/hr. CASQA assumes that the intent was not to require design for twice the maximum intensity of 0.2 inch/hr. and recommends the following revision to the introductory section: “Flow-based BMPs: storm water flow-based BMPs shall be designed to treat an hourly flow- th <u>of no less than two times the maximum hourly flow of an 85th percentile 24-hour storm.—</u> <u>Dischargers shall calculate the flow needed to be treated using one of the following methods:</u>

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			<i>established using one of the following methods...</i>
19	29. Design Storm Standards (Issue 6)	Section H.7.b.i. (pp 35)	<p>CASQA suggests clarifying the wording of this paragraph to read: “The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch/hr for each hour of a storm event.”</p> <p>The current added wording “for each hour of a storm event” is not consistent with the remainder of the design storm definition. As currently written, this wording unintentionally describes a 24-hour event of 4.8 inches, about 5 times the typical magnitude of the 85th percentile, 24-hour event.</p>
19	30. Design Storm Event (Issue 6)	Section XIII.A.1 (pp 45)	<p>CASQA recommends that the State Water Board extend the purpose of the design storm to shield dischargers from liability and unnecessary actions that might result from the exceedance of NALs during events that exceed the design storm. While there are no automatic monetary penalties for exceeding the NALs, the Discharger is still required to undertake Exceedance Response Actions (ERAs) and which can be resource intensive if the direct cause of the exceedance is the excessive size of a storm event.</p> <p>CASQA recommends the addition of a statement in this paragraph to read: Dischargers shall perform sampling, analysis and reporting in accordance with the requirements of this General Permit and use this information to conduct two types of assessment related to NALs. <i>No analytical results from an exceedance of a design storm shall be used in these assessments.</i> There are two types of NAL exceedances based upon the NAL values found in Table 5.</p>
PRDs/Reporting/No Exposure and No Discharge/SMARTS			
33	31. Unplanned and Temporary Exposure Waivers	Appendix 1, Section 2.b (pp 3)	Facilities with NEC Coverage must register for NOI coverage within 7 days of when an unplanned exposure of industrial activities occurs unless receiving a written waiver from the Regional Water Board. Seven days is insufficient time to contact and receive a written

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			<p>waiver from the Regional Water Board in the event of a one-time exposure or to prepare NOI PRDs (SWPPP, Site Map, etc.). CASQA recommends that the language be changed to say that the Regional Water Board shall be contacted within 7 days of the unplanned exposure and the facility will be required to register for NOI coverage within 21 days of receiving a written waiver denial from the Regional Water Board.</p> <p>Facilities with NEC Coverage must register for NOI coverage prior to a planned facility change that will cause exposure of industrial activities. There may be instances in which changes to a facility occur where materials may need to be outside for a short period of time and it does not make sense to file for NOI coverage during periods with no anticipated rainfall. We recommend that a provision be added that temporary one-time short term planned exposure of materials may be allowed during periods with no anticipated rainfall, if approved by the Regional Water Board, similar to the NOI coverage waiver for unplanned exposure.</p> <p>CASQA recommends the following changes to address these two situations:</p> <p>“b. If changes at a facility result in potential exposure of industrial activities or materials, the “no exposure” conditional exclusion ceases to apply. Dischargers shall register for coverage under this General Permit for industrial storm water discharges prior to a planned facility change that will cause exposure.</p> <p><u>If the planned change is a temporary condition that will occur for a short period when rainfall is unlikely the Discharger may contact the Regional Water Board to discuss whether the requirement to obtain NPDES permit coverage can be waived. Unless the Discharger receives a written waiver from the Regional Water Board, the Discharger shall electronically file for NOI permit coverage within 21 days or receiving the written waiver denial from the Regional Water Board.</u></p> <p><u>In the event of unplanned exposure, the Discharger shall register for coverage under this General Permit for industrial storm water discharges or within seven (7) calendar days after unplanned exposure occurs. If an unplanned exposure occurs due to an emergency response or one-time event that is unlikely to re-occur, Dischargers may contact the Regional Water</u></p>

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33			Board to discuss whether the requirement to obtain NPDES permit coverage can be waived. Unless the Discharger receives a written waiver from the Regional Water Board, the Discharger shall electronically file for NOI permit coverage <u>within 21 days or receiving the written waiver denial from the Regional Water Board.</u> "
25	32. Annual Recertification of NEC	Appendix 1, Section B.6 (pp 5)	<p>CASQA believes that assessing an annual fee associated with annual recertification for No Exposure Certification is unnecessary an inconsistent with federal as well as other state requirements (i.e., Washington and Oregon). Subjecting dischargers who pose little or no threat to stormwater quality to recurring annual fees is unwarranted for dischargers who are merely certifying there has been no change in their status. Should the no exposure status change, the discharger would be required to apply for coverage and would pay permit annual fees as required by the Water Code.</p> <p>Consistent with US EPA and other local state NEC provisions, CASQA recommends the State Water Board modify the NEC submittal requirements to require to recertification once every 5 years, rather than annually.</p>
25	33. NEC Coverage PRDs (Site Map)	Section II.B.1.c (pp16)	<p>A site map equivalent to a SWPPP site map from Section X.E of the General Permit is required as part of the NEC PRDs. Due to the potential high cost of producing a site map with all of detailed requirements listed in Section X.E, we recommend the requirement to include a site map is removed from the NEC submittal requirements or that a recent aerial photograph, and/or photographs of the facility be allowed in lieu of the detailed site map. Aerial photographs and/or photographs will have sufficient detail to illustrate a condition of no exposure and should be sufficient for the purposes of the NEC. Facility photographs are sufficient to show no exposed significant materials for a notice of termination, and should be sufficient for the purposes of an NEC.</p> <p>There is no requirement to submit a site map with the NEC under the EPA MSGP or other NPDES permits issued by other West Coast states with NPDES permitting authority (i.e., Arizona, Washington, and Oregon).</p>
34	NONA/No Discharge	Section I Finding 22	CASQA understands that California Water Code (CWC) section 13399.30(a)(2) is the basis

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34		(pp 3)	<p>for some of the language in Finding 22, which has been included in lieu of the no discharge exclusion contained in the draft Industrial General. However, the new Finding 22 text is unclear and infeasible, and provides a disincentive for dischargers to contain water on their site. The draft Industrial General text goes further to state that a NONA will certify that a facility will never discharge. We request that a specific threshold be provided that will provide certainty for dischargers, regulators, and environmental groups, as well as civil engineers that are being asked to stamp hydrology reports certifying “no discharge ever.” The 2011 Draft IGP analysis of its selection of the 100-year, 24-hour storm as the threshold for the no discharge certification, correctly stated that this storm event had a 1% chance of occurring in a given year. We assert that this is a sufficiently small probability to protect water quality and provide certainty for engineers and dischargers. CASQA requests this provision be included in the permit.</p> <p>Using an analogy to the NEC certification which allows a discharger to qualify for the exclusion, and later obtain full permit coverage in the event of an exposure, it stands to reason that a similar off-ramp should be included for facilities with little chance of ever discharging. Because a facility like this is unlikely to ever discharge, and therefore will never reach ERA Level 2 and have a chance to redefine BAT/BCT, it is essential to provide an opening for these facilities to provide justification that they present no threat to water quality. Because the CWC does not define the criteria for establishing a NONA, we also request that guidance be provided for public review prior to permit adoption.</p>
35	NONA/No Discharge Demonstration	Section I Finding.22 (pp 3)	<p>It is not clear whether Finding 22 is creating new criteria for how the demonstration must be made under CWC 13399.30, since it adds detail that is not in the CWC section (i.e., certification by a licensed PE for the case where discharge is prevented by the facility's engineering and construction). In addition, Finding 22 uses the phrase “never discharge” which is not in the CWC section.</p> <p>CASQA recommends draft Industrial General Permit language should be clarified to reflect that the permit does not, itself, require filing a NONA. Suggested language modifications for Finding 22 are included below.</p>

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34			<p>“22. Facilities otherwise subject to this General Permit but for which a valid Notice of Non-Applicability (NONA) and a NONA Technical Report has been certified and submitted via SMARTS by the Discharger’s LRP (see Wat. Code, § 13399.30, subd. (a)(2)) are not covered under this General Permit. The facility may be (1) engineered and constructed so as <u>not to never discharge industrial storm water to waters of the United States, as certified by a California licensed professional engineer, based on a 100-year, 24-hour storm</u> or (2) located in basins or other physical locations that are not hydrologically connected to waters of the United States. The NONA Technical Report shall demonstrate that the facility does not discharge to waters of the United States. Information about the NONA and the NONA Technical Report are available on the SMARTS website. This General Permit does not impose any requirement on facilities that do not discharge industrial storm water to waters of the United States, including any requirement to file a NONA; (see Wat. Code, § 13399.30 as to its separate requirements).”</p>
50	SMARTS Data Entry Person	Multiple	<p>CASQA recommends the Industrial General Permit / Storm Water Multi-Application and Report Tracking System (SMARTS) allow Dischargers to designate and utilize data entry persons to enter information and data into SMARTS, which would then be certified and submitted by the Dischargers duly authorized representative.</p> <p>Alternatively, allowance of a data entry person(s) for a facility could be handled administratively through SMARTS. If this option is chosen, CASQA recommends the Fact Sheet note this.</p>
34	Annual Report	Fact Sheet, Item O (pp 54), and Section XVI (pp 57)	<p>The reference to the Annual Report contents in the Fact Sheet is not consistent with the description in the draft Industrial General Permit. The language in the Fact Sheet states the “Annual Report must include a summary and evaluation of all sampling and analysis results, original laboratory reports, chain of custody forms.” The Annual Report description included in the draft Industrial General Permit does not specify the requirements to include original laboratory reports and chain of custody forms. CASQA recommends the Fact Sheet be revised to be consistent with the language included in the draft Industrial General Permit.</p>

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38.	Annual Report	Section XVI (pp 57)	The reporting and evaluation year for the IGP is July 1 through June 30. It is unreasonable to submit an annual report by July 15. At minimum 60 days following the end of the reporting period should be allowed to complete and submit the report. However, we recognize that the SMARTS system would be over-burdened if both industrial and construction dischargers have the same submission deadline. Therefore, CASQA recommends that the IGP Annual Report be completed and submitted by September 15 to offset it from the Construction General Permit Annual Report.
LRP and Signatory Requirements			
39.	Definition of Duly Authorized Representative (Issue 7)	Attachment H Glossary	<p>“Duly Authorized Representative A person who has been authorized by the Legally Responsible Person Discharger to sign specified documents, as set forth in Standard Condition Section XXI.K., certify, and electronically submit Permit Registration Documents, Notices of Termination, and any other documents, reports, or information required by the General Permit, the State or Regional Water Board, or US EPA. Duly Authorized Representative eligibility is as follows:</p> <p>a. The LRP must authorize via SMARTS any person designated as a Duly Authorized Representative;</p> <p>b. The authorization shall specify that a person designated as a Duly Authorized Representative has responsibility for the overall operation of the regulated facility or activity, such as a person that is a manager, operator, superintendent, or another position of equivalent responsibility, or is an individual who has overall responsibility for environmental matters for the company; and,</p> <p>e. The authorization must be current (it has been updated to reflect a different individual or position) prior to any report submittals, certifications, or records certified by the Duly Authorized Representative.”</p>
40.	Various references to LRPs (Issue 7)	Section I, Finding 14 (pp 2)	This General Permit requires the Discharger’s Legally Responsible Person (LRP) to electronically certify and submit all documents through the State Water Board’s SMARTS

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			website to reduce the state’s reliance on paper, to improve efficiency, and to make such General Permit documents more easily accessible to the public and the State and Regional Water Boards.
20 41.	Various references to LRPs (Issue 7)	Section I, Finding 22 (pp 3)	Facilities otherwise subject to this General Permit but for which a valid Notice of Non-Applicability (NONA) and a NONA Technical Report has been certified and submitted via SMARTS by the Discharger ’s LRP (see Wat. Code, § 13399.30, subd. (a)(2)) are not covered under this General Permit. <i>Note also:</i> the Water Code does not require submission of NONA’s via SMARTS and it appears inappropriate to add this requirement in a specific permit.
20 42.	Various references to LRPs (Issue 7)	Section II (pp 15)	“...Upon administrative termination, Dischargers are subject to enforcement by the Regional Water Boards until coverage under this General Permit is obtained by designating an LRP to submitting new PRDs pursuant to the provisions of Section II. <u>Individuals authorized to certify and submit PRDs and other reports shall be consistent with Section XXI.K of this General Permit, and the administrative details for the use of the SMARTS forms, shall be described in guidance in SMARTS.</u>
20 43.	Various references to LRPs (Issue 7)	Section II A.1 (pp 15)	“The Discharger shall designate a Legally Responsible Person (LRP) to register for coverage under this General Permit by certifying and submitting Permit Registration Documents (PRDs) ...”
20 44.	Various references to LRPs (Issue 7)	Section II C (pp16)	“1. Existing or new Dischargers shall designate an LRP to register for NOI or NEC coverage under this General Permit by certifying and submitting PRDs in SMARTS...” “ 2. The Discharger shall designate an LRP to certify and submit all PRDs and other required compliance documents via SMARTS, ...” “3. New PRDs shall be certified and submitted via SMARTS by the Discharger ’s LRP whenever there is a change to either the ownership of the facility operations or the location...”

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45.	Electronic Signature and Certification Requirements (Issue 7)	Section XXI.K (pp 68)	<p>“1. All Permit Registration Documents (PRDs) for NOI and NEC coverage, Notices of Termination (NOTs), Annual Monitoring Reports, Level 1 ERA Report, Level 2 ERA Technical Reports, Level 2 ERA Demonstration Technical Reports, or any other document required by this General Permit shall be certified and submitted <u>for submission via SMARTS by the on behalf of the</u> Discharger’s LRP as described in this Section K.”</p> <p><u>“2. PRDs and designations of Duly Authorized Representatives shall be certified and submitted by one of the following representatives of the Discharger:</u></p> <ul style="list-style-type: none"> a. <u>For a corporation: by an authorized corporate officer. For the purposes of this section, an authorized corporate officer means: (a) a president, secretary, treasurer, vice-president, or other officer of the corporation with authority to execute documents on behalf of the corporation pursuant to corporate bylaws or board resolution; or (b) the manager of the facility, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate bylaws and by corporate resolution;</u> b. <u>For a partnership or sole proprietorship: by a general partner or the proprietor, respectively, that is authorized to execute legally binding documents on behalf of the partnership or sole proprietorship (as the case may be) in accordance with the entity’s governing documents; or,</u> c. <u>For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official that possesses signatory authority of the governmental agency at issue. The principal executive officer of a federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of US EPA).</u> <p><u>“3. 2.—Other than PRDs, the LRP Discharger (via a signed document submitted by a person at the level qualified to submit PRDs) may designate a Duly Authorized Representative to certify and submit via SMARTS all other documents on the behalf of the LRP Discharger that are required by this General Permit or requested by the Regional Water Board, State</u></p>

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20			<p>Water Board, US EPA, or local MS4.”</p> <p>“4. 3.—When a new <u>LRP or Duly Authorized Representative</u> is designated, the Discharger shall ensure that the appropriate revisions are made via SMARTS. In unexpected or emergency situations, it may be necessary for the Discharger to directly contact the State Water Board’s Storm Water Section to register for SMARTS account access in order to designate a new <u>Duly Authorized Representative LRP.</u>”</p> <p>[Note: If the intent of the language is to formalize a specific new permit requirement that a Discharger may only have one primary representative at a time authorized to certify documents at the level of PRDs and Duly Authorized Representative designations, this should be made explicit. If a new definition is truly needed, which we would prefer not to see, a term like “Primary Discharger Signatory” could be coined, but it seems clearer to use longer descriptive phrases matching normal permit signatory requirements, if possible. Regardless it would be clearer to keep all the signatory requirements in this single Section K and referring only to the Discharger elsewhere. This also avoids the confusion as to whether actual permit requirements attach to signatories personally, which is not the law or the intention.]</p> <p>“5. 4.—Documents certified and submitted via SMARTS by an unauthorized or ineligible <u>LRP or Duly Authorized Representative person</u> are invalid.”</p> <p>“5.—LRP-eligibility is as follows: [delete entire item]</p> <p>“6. Duly Authorized Representative eligibility is as follows:</p> <p style="padding-left: 40px;">a. The <u>LRP Discharger</u> must authorize via SMARTS any person designated as a Duly Authorized Representative; ...”</p>
TMDLs			
7	46. TMDL Language (Issue 2)	Section V.C (pp 22)	<p>“After TMDL-specific permit requirements are incorporated into this General Permit following the process outlined in Section VII.A., dischargers subject to one or more identified Total Maximum Daily Loads (TMDLs) shall comply with the applicable</p>

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7			<p><u>requirements listed in Attachment D.</u>”</p> <p>“Dischargers located within a watershed for which a Total Maximum Daily Load (TMDL) has been approved by US EPA, shall comply with the approved TMDL if it identifies “industrial activity” or industrial related activities as a source of the pollution and has an adopted Waste Load Allocation (WLA) and/or implementation language. Attachment D contains a reference list of potential TMDLs that may apply to Dischargers subject to this General Permit.”</p>
Receiving Water Limitations			
22	Receiving Water Limitations	Section VI A and D (pp 22)	<p>“A. Dischargers shall ensure that industrial storm water discharges and authorized NSWDS do not cause or contribute to an exceedance of any applicable WQS in any affected receiving water.</p> <p>Add new item</p> <p><u>“D. A Discharger will not be in violation of Receiving Water Limitation VI.A. as long as the Discharger has fully complied with the procedure described in Special Condition XX.B.”</u></p>
22	Water Quality Based Corrective Actions	Section XX B (pp 65)	<p>“ 1. Upon determination by the Discharger or written notification by the Regional Water Board that industrial storm water discharges and/or authorized NSWDS contain pollutants that are in violation of <u>may otherwise exceed</u> of Receiving Water Limitations (Section VI.C)⁸, the Discharger shall: ...”</p>
Professional Roles: QISPs/Training			
36	Exemption for licensed professionals	Section I, Finding 53 (pp 8)	<p>CASQA notes that the recent legislative effort to exempt licensed professionals from training requirements was not signed by the Governor. CASQA recommends that the State Water Board re-examine the exemption the draft Industrial General Permit provides for licensees and determine whether it remains appropriate to carve out a permit exemption for these</p>

⁸ We assume reference to VI.C rather than VI was a typographical error.

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			professionals from QISP training.
50.	QISPs role in reviewing weather forecasts	Section XI.A.2.d (pp 37)	<p>As written, only Licensees can perform QISP functions until the QISP training is developed and provided to the public. Page 37 of the draft Industrial General Permit states: “Dischargers shall ensure that a QISP reviews precipitation forecast information from the National Weather Service Forecast Office.” This means facilities must, starting July 1, 2013, hire a P.E., licensed geologist or a similar Licensee to check the weather forecasts each day on NOAA. This is extremely inefficient and would be an unreasonable financial burden to the facility. CASQA recommends removing the requirement for a QISP to check the NOAA website and instead require the discharger ensure the precipitation forecasts are checked. This allows the facilities flexibility to ensure a properly trained individual is responsible for monitoring the weather, while preventing the unnecessary burden of having a P.E. or someone similar perform this routine task. Making this language change is consistent with the other components of the permit, which identify the Discharger as being responsible for ensuring tasks needed for permit compliance (such as conducting inspections and sampling). Allowing the Discharger to take responsibility for this task is also consistent with Table 1 and Table 2 on page 24 of the Order, in which weather forecasting is not listed as a duty of a QISP.</p>
51.	QISPs role in NEC	Section II.D.1 (pp 17)	<p>As currently written, the draft Industrial General Permit requires the NEC to be submitted by a QISP II or III by July 1, 2013, and be certified annually beginning July 1, 2014. QISP I, II and III implementation is not required until July 1, 2014. It is highly unlikely the QISP training program will be completed by the July 1, 2014 implementation date, and nearly impossible for it to be completed by July 1, 2013. This limits those who can prepare NECs to Licensees for that initial “gap” year. It is unclear whether this “gap” is intentional.</p> <p>In CASQA’s review of the NEC requirements in the draft Industrial General Permit, the components of the NEC application do not appear to require engineering knowledge or application of engineering concepts. In fact, for a NEC application, having knowledge of the specific facility and its daily operations would be more critical to a properly completed NEC than having a P.E. or a P.G. license. Further, requiring facilities that have heretofore been</p>

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38			exempt from permitting to hire a qualified Licensee, who is unfamiliar with the facility operations, to complete the NEC application would be a significant financial burden. The eleven activities / materials to be evaluated for the preparation of the NEC Checklist (Attachment 1, section D) appear to mimic those developed by EPA and required for the federal version of the No Exposure Certification in the MSGP. EPA does not require the No Exposure Certification or exposure review be completed by a licensed individual and makes no mention of the need to incorporate engineering principles or engineering knowledge in their NOE Training Module. CASQA recommends closing that “gap” for NEC preparation, and allow the discharger to submit the NEC application until the QISP training program is available.
52.	QISPs for more than one industrial activity	IX, Table 2 footnote (pp 24)	The footnote to Table 2 states: “a QISP I can only perform the QISP actions for 1 type of industrial activity.” However, many facilities have more than one industrial activity occurring. For example, industrial plants such as concrete or asphalt manufacturers may have vehicle maintenance and/or fueling activities occurring on-site. A manufacturing facility can also have recycling activities (such as facilities that recycle road materials that are subsequently used in asphalt or concrete on-site manufacturing). CASQA understands that Board staff does not intend this footnote to require multiple QISPs at a facility if there are more than 1 type of industrial activity at the facility, yet as written this is what the footnote implies. CASQA also understands that it is vital for a QISP to be familiar with the industry for which they have oversight. CASQA requests the language in this footnote to be changed to: “a QISP I can only perform the QISP actions for industrial activities with which the QISP is familiar.” This will preserve the intent to of ensuring a QISP is appropriately matched for a facility while allowing flexibility for facilities that have multiple industrial activities.
53.	Definition of Licensee	Section IX.A.1 (pp 23)	CASQA finds the current definition of a licensee to be deficient in recognizing other types of professional licenses that provide for sufficient storm water knowledge and experience. Section IX.A.1 states: “A California Board for Professional Engineer, Land Surveyors, and Geologist licensed professional Civil Engineer, registered geologist, and a certified

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40			<p>engineering geologist (licensee) is a QISP (Level I, II, or III) and does not need to complete a State Water Board-sponsored or approved QISP training course."</p> <p>Other state licensed Engineers who may have equal expertise in storm water management and facility experience include licensed professional chemical engineers, industrial engineers, and mining engineers. CASQA requests their inclusion in the list of Licensees.</p>
Compliance Groups			
41	54. Compliance Group	NA	<p>Because Compliance Groups have the potential to provide meaningful input/data for specific sectors/industries, Compliance Group Leaders should be given the flexibility to submit Alternative Compliance Plans tailored for a specific industry/sector with the ultimate goal of establishing technically sound sector-specific NALs. Such an approach is consistent with the State Water Board's objective to build flexibility into the Industrial General Permit and to move towards industry-specific NALs. The Alternative Compliance Plans would set forth monitoring schedules and protocols, methods to compile BMP information, and data analysis procedures with a goal of establishing industry-specific NALs within the term of the proposed permit.</p>
42	55. Group Leader Training Requirements	Fact Sheet, Section M (pp 53-54)	<p>The draft Industrial General Permit Fact Sheet (pages 52 and 53) and the draft Industrial General Permit (page 53) are clear that CG1L must be a QISP II or III and the CGL2 must be a QISP III. The draft Industrial General Permit is unclear, however, whether or not Compliance Groups may be composed of combination of Level 1 and Level 2 Dischargers. There is no specific language which would preclude this situation and, as a practical matter, those members of a Compliance Group who are Level 1 Dischargers could become Level 2 Dischargers based on sampling and analysis results from a single year. If groups were not allowed to contain both Level 1 and Level 2 dischargers, there would be constant changing of membership within the groups creating unmanageable administrative issues and unstable groups. Assuming that Compliance Groups will be allowed to include Level 1 and Level 2 Dischargers, language should be added to the draft Industrial General Permit that would require the Group Leader for a Compliance Group containing both Level 1 and Level 2</p>

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42			<p>Dischargers to be a QISP III.</p> <p>Language should be added to the last paragraph of Section M on page 53 of the draft Industrial General Permit Fact Sheet that states: “Group leaders for compliance groups composed of both Level 1 and Level 2 dischargers shall be a QISP III.” This is based the understanding that a QISP III does not have to be a California licensed professional engineer unless performing engineering functions such as designing a treatment system or other work defined as professional engineering.</p> <p>Although the required training levels are relatively clear, draft Industrial General Permit does not specify group leader qualifications during the interim period between the date of permit adoption and the date when State Water Board approved training courses are available.</p> <p>Language should be added to Section M of the Fact Sheet that addresses group leader requirements for the period between the adoption of the draft Industrial General Permit and the time when QISP I, II and III Training and Certification Programs have been effectively implemented. The language used to describe group leader qualifications in the Draft 2005 Industrial General Permit could be used with the exception that Registered Environmental Managers as certified by the National Registry of Environmental Professionals, should be substituted for Registered Environmental Assessors (REA) since the REA program has been suspended. The language should be inserted as the fourth (4th) paragraph in Section M to wit:</p> <p><u>“Until such time as the as the State Water Board approved training and certification programs have been effectively implemented, the Group Leader should be a corporation, association, environmental consultant, or other entity representing a group of significantly similar industrial facilities that meets the following qualifications:</u></p> <ul style="list-style-type: none"> <u>i. A licensed Professional Engineer or Hydrologist with a minimum of one year experience in storm water management; or</u> <u>ii. A college graduate with a minimum of a Bachelor of Science Degree in science, engineering, or environmental-related field and a minimum of three years experience in</u>

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42			<p><u>storm water management; or</u></p> <p><u>iii. A Registered Environmental Manager, as certified by the National Registry of Environmental Professionals, with five years of experience in storm water management, or other individuals who have equivalent level of education and experience as Section i above.”</u></p>
56.	Clarification of Level 1 vs Level 2 Compliance Groups	Fact Sheet, Section M (pp 53-54), and Section I Finding 74 (pp 12)	<p>The draft Industrial General Permit language is not clear regarding whether Level 1 and Level 2 dischargers may both be members of the same compliance group for a specific industry. It would be difficult for some industries to form compliance groups composed only of Level 1 Dischargers. If a compliance group of Level 1 dischargers could be formed, it would be unlikely that all members could maintain their status as a Level 1 Dischargers. If group members were not allowed to be a mixture of Level 1 and Level 2 Dischargers, then the result could easily become an impractical and unmanageable situation where group members are constantly changing groups or dropping out of compliance groups.</p> <p>Therefore a sentence should be added at the end of the third paragraph in Section M of the Fact Sheet that reads:</p> <p><u>“For Compliance Groups composed of both Level 1 and Level 2 Dischargers, the group member may satisfy ERA Level 1 or Level 2 requirements as appropriate and represented by an approved CGL 2.”</u></p> <p>Insert the following after the first sentence in Section I, Finding 74 of the draft Industrial General Permit:</p> <p><u>“Participants meeting the basic qualifications for membership in a compliance group may be Level 1 or Level 2 Dischargers.”</u></p> <p>Revise the second sentence in Finding 74 to state:</p> <p><u>“Compliance Groups provide an opportunity for the Participants to pool resources and develop consolidated Level 1 ERA Reports for Level 1 NAL exceedances and/or Level 2 ERA Reports for Level 2 NAL exceedances that are representative for all Level 1 or Level 2</u></p>

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			<u>Dischargers within the Compliance Group as appropriate.”</u>
43	57. Provide an Expedited ToR approval process for Group Leaders to Train their Group Participants	NA	CASQA recommends that the State Water Boards IGP Steering committee consider an expedited ToR approval process for Group Leaders to provide QISP I training to members of their Compliance Group. Group Leaders will have already demonstrated subject matter expertise, and should merely have to demonstrate experience and knowledge as trainers and complete any required ToR training and agreements in order to serve as an IGP ToR.
Other			
44	58. Lack of LID/Green Infrastructure Incentives	NA	CASQA recommends the State Water Board evaluate opportunities to incorporate LID/Green Infrastructure incentives in the next draft IGP. The re-issuance of the Industrial General Permit is an ideal forum for the State Water Board to promote green infrastructure improvements at existing development sites, and with the variety of guidance documents already developed and readily available, CASQA recommends the State Water Board look for opportunities to incorporate appropriate incentives.
45	59. Historical/Cultural Properties	NA	CASQA recommends that the State Water Board provide special consideration for sites on the National, State or Local Registers of Historical Places. Such sites may be limited in the practices they may employ due to the historic nature of the sites. In particular, some inactive mines are registered historic sites.
46	60. Inactive Mines	Section XIII.A (pp 51)	CASQA recommends modification to allow Engineering Geologists or Mining Engineers to prepare Inactive Mine Certifications.
47	61. Inactive Mines	Section XIII.C.3 (pp 52)	CASQA recommends the following changes to the inactive mining recertification: “3. The Inactive Mining Operation Certification shall be re-certified annually by a <u>QISP III unless there have been substantial geo-physical site changes, in which case the re-certification shall be made by a</u> California licensed professional <u>civil</u> engineer, <u>engineering geologist, or mining engineer.</u> and <u>Annual re-certifications shall be</u> submitted with the Annual Report.

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62.	Non Stormwater Discharge Definition	Glossary	<p>CASQA recommends that the definition of non-stormwater discharges be revised to explicitly state that the discharge of contained stormwater is not considered a non-stormwater discharge.</p> <p>Non-Storm Water Discharges</p> <p>Discharges that do not originate from precipitation events. Including, but not limited to, discharges of process water, air conditioner condensate, non-contact cooling water, vehicle wash water, sanitary wastes, concrete washout water, paint wash water, irrigation water, or pipe testing water. <u>The discharge of contained stormwater is not considered a non-storm water discharge since it originates from a precipitation event.</u></p>

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